IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cri. Appeal No. 440 of 2000

Date of Decision: 26th September, 2007

State of H.P.		Appellant
	Versus	
Chanan Singh		Respondent

Coram

The Hon'ble Mr. Justice Sanjay Karol,J.

Whether approved for reporting[1]? No.

For the appellant: Mr.M.A.Khan, Addl. Advocate General.

For the respondent: Mr.Romesh Verma, Advocate.

Sanjay Karol, J. (Oral)

The present appeal arises out of judgment dated 29th February, 2000 passed by Sub Divisional Judicial Magistrate, Rampur Bushahr, District Shimla, HP, in case No. 220-2 of 1996 acquitting the accused of the charged offence under Section 408, IPC.

As per the case of the prosecution, accused was employed as Salesman with Majholi Co-operative Society in the year 1982-83. As on 9.5.1997 he was having cash in hand of Rs.18,712/- which he failed to deposit with the Society. Consequently, Managing Committee of the Society vide Resolution (Ext.PW-1/C) made a complaint (Ext. PW-1/D) to the police and FIR (Ext.PW-9/A) with Police Station, Rampur was registered under Section 408, IPC against the accused. The police carried out the investigation and took into possession the account books of the complainant-Society and also the letter acknowledging the said amount,

[1] Whether the reporters of Local Papers are allowed to see the Judgment?

issued by the accused being Ext.PW-1/A. The challan was presented in the Court for trial and after complying with the provisions of Section 207, Cr.P.C. the accused was charged for an offence under Section 408 IPC, and he did not plead guilty and claimed trial.

During trial the prosecution examined 13 witnesses and the statements of the accused under Section 313, Cr.P.C. was also recorded.

After examining the deposition of the witnesses, the Court below acquitted the accused for the charged offence on the ground that the prosecution failed to prove the case against the accused inasmuch as accused was never employed as Salesman by the complainant-society and no expert was examined to verify and certify the signatures of the accused on Ext.PW-1/A. Further the affairs of the Society had been wound up four years prior to the lodging of the complaint and the inspection was carried out much later.

I have perused the statements of the witnesses. The statements of the Inspector of the complainant-Society, Shri Durga Ram Tanwar (PW-1), Secretary of the Society Babu Ram Chauhan (PW-2), Pyare Lal (PW-3) and Gopal Singh (PW-4) are relevant as the other witnesses are formal in nature.

PW-1 has admitted in his cross-examination that the accounts of the Society were audited on yearly basis and that the affairs of the society closed in the year 1985 and the inspection was conducted only in the year 1989. He has candidly admitted that the accused was not appointed as a Salesman but was appointed on commission basis and entitled to get 50% of the profit of the sale of the society. Version of PW-2, however, is contrary to the version of PW-1, as, according to whom, the accused was appointed as a Sales person. PW-3 has stated that no handwriting expert was examined by the prosecution at all. PW-4 has

admitted that on Ext.PW-1/A the date mentioned is 28.4.1996 and there is over-writing on the said date so as to make it to read 28.11.1996. In any event this document does not stand proved in the absence of any expert having been examined by the prosecution.

Perusal of the statements of these witnesses would also show that no one has stated that amount in question was entrusted to the accused. Therefore, in the absence of any entrustment and lack of any evidence to show the guilt of the accused, it cannot be said that the case against the accused is made out for the charged offence. There is nothing on record to show that the accused had any dishonest intention of misappropriating the money. It has already come on record that he was appointed as a commission agent and had business transaction with the society. It may be that the Society had to recover some money from the accused, but however, that fact alone would not prove the criminal intent on the part of the accused in dishonestly misappropriating the society's money.

The Court below has correctly appreciated the facts and material on record while arriving at its conclusion. I see no perversity in the conclusion and the appeal is accordingly dismissed. The bail bonds stand discharged.

26th September, 2007 (Sanjay Karol)
(C) Judge.